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OGC Has Reviewed

30 September 1948.

MEMORANDUM FOR THE RECORD.

SUBJECT: Copyright in Photographs.

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1. On Monday 27 September, a conference was held between Mr. Houston, the undersigned, and [REDACTED] Chief of the Graphics Register of OCD. The problem has arisen concerning the right to include in and to disseminate from the Graphics Register photographic material -- both still and motion picture -- much of which would be protected by the copyright law, both statutory and common law.

2. This matter was also discussed by the undersigned and Mr. Arthur Fisher, Associate Register, Library of Congress.

3. It should be noted that at the present time there are two predominant schools of thought in the field of copyright. The first is represented by the adherents to the Bern Convention, who urge the maximum protection for the creator of intellectual property, including the maximum protection for his right of exploitation and reproduction for pecuniary gain. The second school would modify this theory somewhat under the doctrine of "fair use." This is a common law doctrine which its supporters seek to expand in the interests of national collections and scholarship.

4. It is generally felt that if an author offers his work for sale to this Agency, he should be paid for it by contractual agreement. Whether he desires to sell the material or to make a gift thereof, a written release should be secured by CIA which will give it the authority to reproduce and disseminate the material in the interests of national security.

5. In considering compensation, it should also be remembered that a photograph is a whole work in itself, as contrasted to quotations from books, which are only portions of a copyrighted work. These principles must govern, regardless of whether the work is one that is protected by statutory copyright or by the creator's common law right of copy.

6. If the work is published and protected by copyright, it is felt that to reproduce in a single copy for the master Graphics Register file might well be justified under the doctrine of fair use. It is felt that dissemination of copies of this photograph to an extremely limited number of recipients of a document in which the photograph appears as an illustration

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might conceivably be justified in the interests of national security as fair use. Also, the main basis of such justification seems to be the fact that there is a relatively small possibility of detection of the infringement. Nevertheless, it should be noted that, where the photograph is reproduced and disseminated in multiple copies, a violation of the copyright law will have taken place. However, as stated above, the possibilities of detection are small, the measure of damages would be infinitesimal, and the necessary work of searching the records to ascertain whether the photograph was copyrighted and by whom would be prohibitive, when multiplied by many such instances. One of the dangers of the "help-yourself" doctrine is the fact that the document may eventually be declassified and reach a much wider number of people, so that ultimately the infringement might be detected.

7. It would therefore be preferable if direct contracts were made with the main sources of pictorial information, newspapers, magazines, news reel and motion picture companies, and the like, wherever possible giving CIA the right to use and reproduce photographs in their publications in the interests of national security, provided such publications are not given general public distribution but are restricted to intelligence users within the Government. It may be wise to attempt to go a step beyond that to include the cases where the Graphics Register disseminates the photograph to the intelligence services of IAC agencies who in turn reproduce it in intelligence publications.

8. Where a single copy of the photograph is taken or single copies are in turn furnished to the IAC agencies, the doctrine of fair use might reasonably apply. The problem becomes acute only when the photograph is reproduced in editions, even though the dissemination is limited to twenty-five people. Where a copyrighted photograph is distributed under the doctrine of fair use, it should contain a notice to the distributee that the photograph is subject to copyright and cannot be reproduced without permission from the copyright owner.

9. Further problems arise where the photograph originates abroad. If the creator is a citizen of a country which enjoys reciprocal copyright relations with the United States, legal protection must be furnished. If, however, the photograph is of Russian origin, it can be reproduced, as there are no copyright relations between this country and the USSR. However, this does not solve possible problems if the Russian photograph is obtained from someone who has entered into contractual relations for its distribution which might make unauthorized distribution a violation of the contract.


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10. The problem must also be considered where agents abroad, in connection with their work, deliver photographs as a part of their report. The title to these photographs should be considered in any contract for hire which is entered into.

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